

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) |                                 |
|                                  | ) |                                 |
| <b>Plaintiff,</b>                | ) |                                 |
|                                  | ) | <b>No. 05-06002-01-CR-W-GAF</b> |
| <b>v.</b>                        | ) |                                 |
|                                  | ) |                                 |
| <b>LISA MONTGOMERY,</b>          | ) |                                 |
|                                  | ) |                                 |
| <b>Defendant.</b>                | ) |                                 |

**DEFENDANT’S MOTION TO AMEND SCHEDULING ORDER AND TO  
CONTINUE TRIAL DATE**

**COMES NOW** Defendant, by and through her appointed counsel, and hereby requests this Honorable Court enter an Order amending the Scheduling Order [Doc. 49, filed 5/19/05] and continuing the trial of this case.

**I. Introduction**

Capital cases are difficult no matter what - we recognize the need to move forward but despite our best efforts to date, as detailed below, we cannot provide competent representation under the current scheduling order. The necessary investigation, motion practice, discovery and defense scientific testing simply cannot be accomplished without additional time.

To assist the Court and government counsel in appreciating the critical need for this continuance and to demonstrate that this request is not the result of procrastination by defense counsel, this motion will outline numerous stumbling blocks to an April 2006 trial date and the general areas in which extensive work remains to be accomplished.<sup>1</sup>

## **II. Governing Legal Principles**

The Sixth Amendment entitles a criminal defendant to more than mere legal representation; an accused has the right to the effective assistance of competent counsel. *Powell v. Alabama*, 287 U.S. 45, 58, (1932). In order to fulfill that Constitutional guarantee and render effective assistance of counsel, counsel must be given adequate time to prepare for a case. *See Powell v Alabama*, 287 U.S. 45, 71 (1932) (inadequate case preparation can jeopardize an accused's right to effective assistance of counsel). While “the Constitution nowhere specifies any period which must intervene between the required appointment of counsel and trial, the denial of adequate time for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and

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<sup>1</sup>Should the Court require additional detail, counsel is prepared to file a supplemental document detailing the extent of the investigation and preparation that has been completed and that remains to be done in this case. Such additional filing would need to be provided to the Court *ex parte* and under seal in order to protect attorney client privilege and work product.

nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel.” *Avery v Alabama*, 308 U.S. 444, 446 (1940). “The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.” *Powell v. Alabama*, 287 U.S. at 59. Obtaining adequate time to properly prepare for representing a person facing death is essential.

Defense counsel face difficult and time-consuming tasks in capital cases, especially in light of the fact that they operate without the resources available to the government. When a person's life is at stake counsel are required to exhaustively explore every factual and legal aspect of the “defendant's character...and any of the circumstances of the offense...”, *Lockett v. Ohio*, 438 U.S. 586, 604 (1978), preparing in effect for two trials. Moreover, a capital trial is different from all other cases, not just by degree, but by kind.

The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Rev. ed. 2003) established the expectations of the profession concerning the obligations of counsel in capital cases. Of particular note, Guideline 10.7 states:

A. Counsel at every stage have an obligation to conduct thorough and

independent investigations relating to the issues of both guilt and penalty.

1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.

The United States Supreme Court has also been clear about the duties of capital case counsel to conduct a thorough investigation. *See, e.g., Rompilla v. Beard*, \_\_\_ U.S. \_\_\_, 125 S. Ct. 2456 (2005)(even when a capital defendant and his family members have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase); *Wiggins v. Smith*, 123 S. Ct. 2527, 2537 (2003) (counsel's failure to fully investigate Wiggins' background and present mitigating evidence of his fortunate 'excruciating life history' violated his Sixth Amendment right to counsel); *Williams v. Taylor*, 529 U.S. 362, 395-96 (2000) (counsel ineffective for failing to uncover and present evidence of defendant's "nightmarish childhood," borderline mental retardation, and good conduct in prison).

Following the requirements of a complete and thorough investigation

established in *Wiggins*, the United States Court of Appeals for the Eighth Circuit in *White v. Roper*, 416 F.3d 728 (8th Cir. 2005), reversed a death sentence when the defense counsel failed to conduct a complete investigation and identify and call as a witness an individual who would have provided strong testimony of mistaken identity. The Court stated the “presumption of sound trial strategy founders . . . on the rocks of ignorance, as in *Wiggins v. Smith*, 539 U.S. 510, 527-28 (2003).” *Id.* at 732. Other Circuits agree, and have reversed for failure to conduct an adequate investigation. *See, e.g. Coleman v. Mitchell*, 268 F.3d 417, 449-51 (6th Cir. 2001) (though counsel’s duty to investigate mitigating evidence is well established, counsel failed to investigate and present evidence that defendant had been abandoned as an infant in a garbage can by his mentally ill mother, was raised in a brothel run by his grandmother where he was exposed to group sex, bestiality and pedophilia, and suffered from probable brain damage and borderline personality disorder); *Jermyn v. Horn*, 266 F.3d 257, 307-08 (3d Cir. 2001) (counsel ineffective for failing to investigate and present evidence of defendant’s abusive childhood and “psychiatric testimony explaining how Jermyn’s development was thwarted by the torture and psychological abuse he suffered as a child”); *Caro v. Woodford*, 280 F.3d 1247, 1255 (9th Cir. 2002), *cert. denied*, 122 S. Ct. 2645 (2002) (counsel ineffective for failing to investigate and present evidence of client’s brain damage due to prolonged

pesticide exposure and repeated head injuries, and failing to present expert testimony explaining “the effects of the severe physical, emotional, and psychological abuse to which Caro was subjected as a child”).

Here, counsel have tried to be diligent in attempting to fulfill their responsibilities as outlined by the ABA, standards which the United States Supreme Court “long ... [has] referred as 'guides to determining what is reasonable.’” *Wiggins v. Smith*, 123 S. Ct. 2527, 2537 (2003). These Guidelines upgrade the minimum standard from "quality" legal representation to "high quality" legal representation. *See, American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 *Hofstra L. Rev.* 913, 939 (2003) (outlining the 2003 revisions to the Guidelines). Included in the guidelines is the requirement that the capital defendant “receive the assistance of all expert, investigative, and other ancillary professional services . . . appropriate . . . at all stages of the proceedings.” *Id.* at 952.

Capital cases are fundamentally different than any other criminal case, not only in the severity of the potential penalty but in the nature of the evidence and information which must be developed. Sensitive facts need to be disclosed to members of the defense team who are essentially strangers to the defendant. This takes months. Then evaluation by relevant experts must follow. It is an incrementally

slow process.

[R]ecently, in *Wiggins v. Smith*, [539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (1993)] the Court declared that counsel's failure to fully investigate Wiggins' background and present mitigating evidence of his fortunate 'excruciating life history' violated his Sixth Amendment right to counsel. The Court, citing *Williams v. Taylor*, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) and its language on prevailing norms for thorough penalty phase investigation, including those reflected in ABA standards and guidelines, found that counsel's actions could not be construed as strategic as counsel had failed to conduct a thorough social history investigation. The actions of counsel could not, according to the Court, be deemed reasonable as facts known to counsel at the time would have led "a reasonable attorney to investigate further.

These decisions clarify the responsibilities of counsel in a capital case, particularly as it relates to preparation for and presentation in the penalty phase. In addition to the usual requirements for trying a difficult homicide case, counsel in a capital case is required, pursuant to the revised Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, to thoroughly investigate the background and circumstances of the client in order to prepare a case for the penalty phase. Given the severity and irrevocability of a death sentence, extraordinary obligations are properly placed on counsel to prepare and try such a case.

J. Miller, *The Defense Team in Capital Cases*, 31 *Hofstra L. Rev.* 1117, 1119-1120 (2003).

Without adequate time to develop the relationship of trust required for effective representation in a capital case, counsel may never learn or be able to present the most crucial facts about the defendant, facts without which any possible understanding of her actions is impossible.

In *Ungar v. Sarafite*, 378 U.S. 575 (1964), the Supreme Court explained:

“The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. *Avery v. Alabama*, 308 U.S. 444. Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. *Chandler v. Fretag*, 348 U.S. 3. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. *Nilva v. United States*, 352 U.S. 385; *Torres v. United States*, 270 F.2d 252 (C. A. 9th Cir.); cf. *United States v. Arlen*, 252 F.2d 491 (C. A. 2d Cir.).”

*Sarafite*, 378 U.S. 598-90.

Consistent with the Supreme Court’s decision in *Sarafite*, other federal courts have held that the denial of a motion for continuance raises constitutional concerns “if there is an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay.” *United States v. Gallo*, 763 F.2d 1504, 1523 (6th Cir. 1985) (citation omitted), *cert. denied*, 474 U.S. 1068 (1986). *See, e.g., United States v. King*, 664 F.2d 1171, 1173 (10th Cir. 1981); *United States v. Verderame*, 51 F.3d 249 (11th Cir.1995); *see also, United States v. Poston*, 902 F.2d 90, 96 (D.C. Cir. 1990) (denial of a continuance to allow new counsel to prepare implicates the Sixth Amendment right to counsel).

Here, undersigned are of the firm belief that to require the defendant to proceed

to trial on April 24, 2006, will deprive the defendant of her constitutional right to the effective assistance of counsel as mandated by both the Constitution of the United States and the pronouncements of the Supreme Court of the United States regarding representation in capital cases.

### **III. The Defendant Requests an Order Re-setting the Scheduling Order Deadlines**

Given these obligations and duties, we are bound to request more time because our failure to secure adequate time to perform the minimally required functions of counsel would result in providing ineffective counsel. Therefore, we respectfully request that the Court take note that we cannot meet the deadlines as established by the Court's Scheduling Order of May 19, 2005<sup>2</sup> and request that the Court enter an Order Re-setting the Schedule in this case. It is requested that the dates be amended,

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<sup>2</sup> The current scheduling order requires the defendant to meet several deadlines that cannot currently be met:

December 27, 2005: File pretrial motions  
January 23, 2006: Rule 12.2 notice(s)  
January 24, 2006: Joint Jury Questionnaire  
February 23, 2006: Stipulations and Motions In Limine  
March 10, 2006: *Daubert* challenges  
March 27, 2006: Defense witness and exhibit lists, and expert summaries  
April 24, 2006: Trial

and the trial be continued nine months to an appropriate date in February 2007.<sup>3</sup>

#### **IV. Factual Background**

Mrs. Montgomery was arrested December 17, 2004. The indictment was returned on January 12, 2005, and trial originally set under the Speedy Trial Act for March 14, 2005. The parties were aware at the time of arraignment in January 2005 that this case could not be ready for trial within this routine setting and began discussions of a potential trial date. During the discussions, this Court suggested a possible date of April 24, 2006. [See Exhibit 1]. The government immediately announced its desire to try the case on that date. Defense counsel at the time raised concerns about whether or not that would allow sufficient time to adequately prepare this case for trial, and requested a date in August 2006. [See Exhibit 2, e-mail from former defense counsel Assistant Federal Defender Anita Burns]. However, because the April 2006 date was the date the Court intended to set, counsel deferred to the inevitable, anticipating that should additional time be warranted, another motion for continuance could be filed and would be granted.

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<sup>3</sup>This request is in line with other cases involving complex issues tried in this district. *See United States v. Nelson* (25 months from charge to trial: charged 10/14/99, trial 11/13/01); *United States v. Purkey* (24 months from charge to trial: charged 10/10/01, trial 10/28/03). The trial in *United States v. Ortiz* began 17 months after arrest, and significant investigative failures, including the failure to discover significant mental health issues have been alleged in a post conviction 2255 petition.

At the time the April 2006 trial date was set, defense counsel had employed a mitigation specialist for only two weeks and the mitigation specialist had not yet met Mrs. Montgomery. Defense counsel had only just begun to organize the discovery materials and had as yet, not developed any comprehensive investigative plan, and had not identified the staff that would undertake the continuing organizing and investigative work. Thus, at the time the trial date was set, the defense had not begun any meaningful investigation into either the facts of this case or the life history of the defendant and therefore had not developed any semblance of the scope of what would be involved in the development of this case. As the preparation and investigation of this case began, defense counsel became more keenly aware of the difficulties of meeting an April 2006 trial date.<sup>4</sup>

Despite diligent work since the beginning of the representation: (1) substantial crucial investigation into the facts of this case and the background of their client remains to be done; (2) voluntary discovery production is still ongoing; (3) additional time is necessary to file and litigate several pre-trial motions, including potential

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<sup>4</sup> Indeed, during a status conference in May 2005 on another case, defense counsel Susan M. Hunt requested the Montgomery trial date be switched with another of her cases (*United States v. Thomas Smith*) and tried in September 2006. The Court indicated its approval of those dates, contingent on the government's agreement to the move of the Montgomery trial date. Subsequently, the government objected to moving the Montgomery trial, and the April trial date remained in effect.

motions addressing the publicity this case has received, statutory challenges, and motions addressing the death notice and the federal death penalty (FDPA); (4) substantial time is necessary for an independent review of the government's DNA testing and substantial time may well be required to conduct defense DNA testing after the government has completed its testing and complied with pending discovery requests, as well as time locating the appropriate experts and labs; (5) substantial time will be required for an independent forensic examination and analysis of yet to be produced computer forensic evidence in this case; and finally, (6) substantial additional time is required for the defendant to identify appropriate experts, conduct appropriate testing and then be prepared to comply with the mandates of ***Rule 12.2 of the Federal Rules of Criminal Procedure***.

### **III. The Preparation and Investigation of This Case has Been Delayed Due to The Substantial Changes in the Defense Team**

During her first appearance on December 28, 2004, the Magistrate Court appointed the Federal Public Defenders Office to represent defendant. That Office assigned the case to Assistant Federal Public Defender Anita Burns. Ms. Burns had never represented anyone charged with a capital offense. David Owen, First Assistant Federal Public Defender was also assigned the task of supervising the case in the office and overseeing the budget and other administrative tasks. In that position, Mr.

Owen did not review any of the discovery produced by the government nor did he meet with Mrs. Montgomery. Likewise, Mr. Owen had not represented anyone charged with a capital offense. Thereafter, at the arraignment on January 20, 2005, the government announced that it intended to seek permission from the Department of Justice to pursue the death penalty against Mrs. Montgomery. As a result and pursuant to *18 U.S.C. §3005*, the Court appointed Susan M. Hunt as counsel “learned in the law of capital cases.”

Following appointment of Ms. Hunt, in early February 2005, counsel retained (via the FPD office) a “mitigation specialist,” an individual trained in investigating and developing an understanding of the life history of a capital case defendant. Ms. Hunt also sought and the Court approved the statutory cap of \$7,500 in funding for an experienced investigator<sup>5</sup> in addition to the mitigation specialist and an investigator from the FPD office.

On March 14, 2005, Anita Burns sought leave to withdraw from any further representation of defendant on March 14, 2005, and was formally replaced by David Owen of the FPD office. As a result in the unexpected change in role, Mr. Owen had to both begin the process of becoming familiar with the facts of the case, the client and

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<sup>5</sup>The funding for this investigator ran out mid-summer 2005, and delayed the investigation until the FPD office was able to arrange to contract with this investigator.

the issues, as well as continue his duties as First Assistant in the FPD.

The mitigation specialist conducted some preliminary interviews and meetings with various family members as well as Mrs. Montgomery, but on August 3, 2005, the mitigation specialist retained by the FPD office resigned.<sup>6</sup> This resignation caused an unexpected delay in the work of the case, and required counsel to spend time searching for and retaining another mitigation specialist. A new mitigation specialist with the skills necessary to help investigate this case was hired on August 16, 2005. However, the new mitigation specialist required time to clear her schedule and review the existing discovery and work of the previous mitigation specialist, as well as develop relationships with some of the people previously interviewed.

Finally, realizing the unanticipated complexities of this case, counsel began consulting regularly with Death Penalty Resource Counsel and the Federal Defender Capital Resource Counsel. During those consultations, it was determined that the investigative priorities and focus needed to be re-designed and the procedure for the organization and distribution of the discovery needed revision.

Subsequently, due to the nature and complexity of this case a request was made

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<sup>6</sup>Counsel can provide the Court, *ex parte* and *in camera* with additional detail about the resignation of the mitigation specialist and the withdrawal of Ms. Burns if such is necessary. Neither the resignation nor withdrawal had anything to do with Mrs. Montgomery.

for resource counsel to join the defense team and become an active attorney on this case. That request was granted and on October 7, 2005, Judy Clarke entered her appearance *pro haec vice*. Then, because of the amount of work required by the case, the complexity of the case and the state of the investigation under the newly agreed to plan for investigation, resource counsel arranged for the addition of two experienced capital case/mitigation investigators, both of whom joined the team in October 2005.<sup>7</sup>

As of now the defense team is staffed and actively investigating and preparing this case for trial. However, there were substantial delays due to the loss and replacement of some of the defense team members.

Despite our best efforts, we only now have an idea what will be involved in this investigation. Details of the investigative plan and the reasons for the complexity in this case can be provided to the Court under seal and *ex parte* if it would be useful but such information is the very essence of work product and should not be provided to Government counsel.

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<sup>7</sup>Counsel deemed it necessary to seek the assistance of someone “qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments,” as mandated by the *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* § 10.4(c)(2)(b).

#### **IV. Discovery is Still Ongoing**

Although the government produced a substantial amount of discovery in this case early on, there still remains additional discovery essential to preparing this case for trial that has not been produced. Most of the outstanding discovery is in the hands of either the FBI, the Regional Crime Laboratory or the Regional Computer Forensic Laboratory.

##### **1. The Government Has Not Met Discovery Deadlines in Scheduling Order**

In a Scheduling Order filed May 19, 2005, this Court ordered the government to produce to the defendant within 10 days, or by May 29, 2005, the following items:

- (1) Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
- 2) Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(Doc. 49, Scheduling Order, Section IV (C)(1)(2)).

While the government has provided, and continues to provide, substantial

discovery in this case, to date neither of these provisions of the scheduling Order have been completely complied with by the government. There are several items such as documents, film, computer disks, and a tape of a recorded conversation of defendant at CCA on January 10, 2005, that have not been produced. Government DNA testing is ongoing. The government has not yet produced a “bit by bit” image of the hard drives of computers seized by the government during investigation of this case, including a computer seized from Mrs. Montgomery.

**A. Documents and recordings**

While the Scheduling Order required the government to produce these items by May 29, 2005, many of these items were requested earlier by the defense in an April 16, 2005, Rule 16 letter. [See Exhibit 3]. In that letter, the defendant requested the government provide the following documents:

1. All work records and personnel files of the defendant;
2. Copies of all documents and papers seized from her car, including post it notes, receipts and copies of any documents and papers from her purse and wallet;
3. Copies of the photographs of the car and the evidence contained therein.

[Exhibit 3]. In response to that letter, the government stated it was not in possession of these items, but they were in FBI custody. Counsel for the government then

recommended that all parties schedule a time to meet and as a group examine the evidence in the possession of the FBI. The government suggested this procedure would comply with the defense Rule 16 request.

A meeting with all parties at the FBI to review the evidence was then scheduled for August 11, 2005. At this meeting, the FBI provided all the evidence in their "1B" files for inspection by the parties. This was the first time the defendant was aware that the FBI had seized video recorders, cameras, photos from cell phones, computer disks and a large amount of documents and papers from defendant's residence and automobile. Further, the parties learned that the film in the cameras and the video cameras had not yet been developed, nor had the computer disks been examined. During the meeting, the defense requested copies of all the documents, photographs, disks and video film. The government agreed to provide all that information to the defendant.

Subsequently, counsel for the government informed the defense that the FBI would not copy that information for the defendant, but instead, the FBI would make the items available for the defense to copy. The earliest date all parties were available for that copying was on October 31, 2005. On that date, members of the defense team copied a number of the documents in the FBI's possession. However, at that time the film in the various cameras still had not been processed, nor had the disks been

examined. Further, on October 31, 2005 counsel learned for the first time that other documents such as defendant's employment records were also in FBI custody and maintained in a different file, the "1A" files. Those files have not been produced to defendant despite a specific request for that information on April 26, 2005, and again on November 30, 2005.

Finally, on October 31, 2005 counsel for defendant learned for the first time that the government subpoenaed a least one telephone conversation defendant had while incarcerated at CCA. That phone call occurred January 10, 2005, and is still being transcribed by the FBI. As a result, defendant has not received a copy of that recording or the transcript.

On November 30, 2005, counsel for defendant sent the government another letter about discovery outlining the discovery received to date and requesting other discovery still not produced. [See Exhibit 4]. Approximately two weeks later, government counsel called to discuss the discovery requests and agreed to provide most of the information requested. Counsel for the government called defense counsel again on December 22, 2005, and advised that most of the items requested would be provided the end of the first week of January. However, the DNA testing would not be completed by that date and would be provided later in January. Finally, counsel were informed that depending on the results of the initial DNA testing,

further testing may be requested. Given the time required for DNA testing thus far, further testing could take well into February and potentially March.

Once the additional discovery is received it is likely that review and analysis of that discovery and evidence will require additional investigation or potentially pre-trial motions. In addition, disputed areas of discovery may need to be litigated. The areas of dispute have not been clarified sufficient for the filing of motions.

### **B. Computer Forensics**

During the investigation of this case the government seized computers, including one from the Stinnett residence and one from Mrs. Montgomery's residence. The government sent the seized computers to the Regional Computer Forensic Laboratory for forensic examination. The computer forensic evidence is critical to this case and must be carefully evaluated by the defense, including an independent forensic examination. The government has provided the defense with a disk that contains an "Encase Report" of **selected** re-built e-mail, photographs and other items on the computers. The disk also contains a database of over 3 million internet hits dating back to 2002, which are not organized by date but are scattered across various dates. To make matters worse, many internet sites which would have been viewed by an individual entering that internet address are not longer available. Thus, the only way to effectively analyze this evidence is to have a "bit by bit" copy

of the computer hard drives. Once that copy is obtained, through the use of forensic assistance, counsel will be able to view the exact internet sites that the computer displayed.

The defendant has requested the necessary copy of the computer hard drives, and the government has agreed to provide the requested copy. Though counsel provided a hard drive to the Computer Lab around the end of November, to date a copy of the hard drives has not been received by the defense. The latest communication from the Lab is that the hard drives will be available on December 27, 2005.

Counsel has been advised that it will take the defense computer examiner at least three weeks to perform the forensic analysis, extract the data required and translate that information into a format capable of being understood and investigated by defense counsel. There exists in the neighborhood of three million (3,000,000) internet connections, message board postings, emails and web searches on the computer seized from Mrs. Montgomery in the months leading up to December 16, 2004.

Because of the importance of this computer hard drive to the government's case, and because there will be an issue of the significance of the information to Mrs. Montgomery's mental state, defense counsel must examine and understand these

“hits” in the context of Mrs. Montgomery’s life at the time.

The forensic review, and evaluation by counsel, and use by potential defense experts cannot be completed for several months.

### **C. DNA Evidence**

In the first few days of the investigation of this case the government seized DNA from both Mrs. Stinnett and Mrs. Montgomery testing. Some of this testing was completed on September 13, 2005 and a report of the testing results was provided to defendant. Subsequently, on December 13, 2005, government counsel advised that the government intended to request further DNA testing, and depending upon the results obtained, may need to seek additional testing.

On November 30, 2005, defendant sent the government a letter requesting discovery of various items related to the initial DNA testing. [See Exhibit 5]. On December 13, 2005, government counsel advised he would request the crime lab to gather that information for production to the defendant, and make it “available” to the defense. Once that information is obtained and the ongoing DNA testing completed and disclosed, the defendant will need to consult with an expert to review the government’s testing procedures and potentially conduct independent testing. Depending upon the actual testing methods used, and the results obtained, counsel anticipate filing a *Daubert* challenge to the use of the scientific evidence.

**V. Additional Time Is Necessary for the Investigation and Preparation of both Phases of this Case**

Due to the variety of difficulties in adequately staffing the defense team in this case, it was not until the fall of 2005 that counsel developed an appropriate investigative plan. Investigation is well underway at this stage and has focused on collecting reliable, objective documentation about Lisa Montgomery's life. This work continues to take substantial time. Mrs. Montgomery and her family lived in multiple locations and in multiple states. Counsel cannot responsibly retain appropriate experts until much of this investigative work has been accomplished, and then additional investigation will be guided by the experts. It is anticipated that the remainder of the mitigation investigation will require several thousand hours.

Given the investigation that still needs to be accomplished counsel simply do not have the necessary time to complete this investigation, obtain records, locate and retain experts and prepare this case for trial before early 2007.

**VI. The Government Has Failed to Comply with the Scheduling Order's Time for Filing the Notice of Intent To Seek the Death Penalty.**

In addition to delays in the production of discovery, the government missed the deadline for filing the Notice of Intent to Seek the Death Penalty by approximately two months. The scheduling order, in envisioning trial in April 2006, mandated that any notice of intent to seek the death penalty be filed by September 16, 2005. The

government did not file that Notice until two months later on November 16, 2005. Essentially the government took 11 months to make the decision as to whether or not to seek the death penalty in this case and expects the defendant to be prepared to meet that notice in 5 months. This simply is not enough time.<sup>8</sup>

## VII. Conclusion

Defense counsel met with government counsel prior to filing of this motion, seeking the government's acquiescence in a continuance. Government counsel advised that the government, for various reasons, will oppose a request for a continuance of this case. However, this opposition should not carry the day. Regardless of fault, much of the work that needs to be accomplished by the defense has been delayed due to the government's failure to comply with the Scheduling Order. Other work has been impeded by difficulties in comprehending the complexities of the case and staffing the defense team. Further, in preparing this case

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<sup>8</sup>Whether or not the government's delay will require dismissal of the Notice of Intent will be an issue this Court will ultimately need to resolve. ***Section 3593(a) of Title 18 of the United States Code*** provides that, in all capital cases, the government "shall, a reasonable time before trial \* \* \* , sign and file with the court" and "serve on the defendant" notice of its intent to seek the death penalty. The purpose of that provision "is to ensure that the accused will not be required to stand trial for his life without having received adequate notice before \* \* \* trial that he *is* to stand trial for capital offense (in addition to ensuring that an accused will not receive the death penalty without having received such notice)." ***United States v. Ferebe***, 332 F.3d 722, 727 (4th Cir. 2003).

for trial the government does not have to engage in the extensive investigation into the background and life history of the defendant. In a case such as this where the accused's life hangs in the balance, the constitutional obligation for counsel to conduct a thorough investigation and to litigate the various complex issues raised by the case, outweighs the government's desire for a speedy resolution.

This request for a continuance of the trial date is not the result of procrastination or a desire for delay on the part of the defense, but for the simple fact that additional time is required in order to insure that defendant receives the effective assistance of competent counsel, as mandated by the Sixth Amendment to the United States Constitution. *See e.g. Powell v. Alabama*, 287 U.S. 45, 58, (1932).

The fundamental concern that drives this request for a resetting of the trial date is the need to provide Lisa Montgomery with the degree of legal representation to which she is entitled under our system of law. That concern is grounded on the proposition that Lisa Montgomery must be provided a fair and just trial. That can only occur if the present trial date is rescheduled and the defense is given a reasonable and adequate time in which to prepare.

In accordance with *Title 18, United States Code*, defendant submits the above stated reasons for this continuance request outweigh the interests of the public and the defendant to a speedy trial under *Title 18, United States Code §3161(c)(1)*.

WHEREFORE, for the above stated reasons defendant respectfully requests this Honorable Court grant her request for continuance and continue the trial of this case until February 2007, and amend the remainder of the Scheduling Order.<sup>9</sup>

Respectfully submitted:

SUSAN M. HUNT, DAVID OWEN  
JUDY CLARKE

COUNSEL FOR LISA MARIE MONTGOMERY

\_\_\_\_\_/s/  
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<sup>9</sup>Counsel request an opportunity to meet and confer with government counsel to recommend revised deadlines once a trial date is set.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was electronically filed in the Court's ECF filing system, on December 27, 2005, and electronically served on all parties.

/s/

\_\_\_\_\_  
Susan M. Hunt

Subj: **05-6002-01-CR-SJ-GAF USA v. Lisa M.Montgomery**  
Date: 2/10/2005 9:39:16 A.M. Central Standard Time  
From: Tracy\_Diefenbach@mow.uscourts.gov  
To: anita.burns@fd.org, shunt5733@aol.com, matt.whitworth@usdoj.gov

Judge Fenner has asked me to contact you regarding available dates in 2006 to set the above referenced case for trial. Based on my understanding that the trial will take approximately 4 weeks inclusive of jury selection we can start the trial on 4/24/06. Please let me know if this date is available on your schedule.

Thank you.

Tracy Diefenbach  
Courtroom Deputy for  
Judge Gary A. Fenner  
tracy.diefenbach@mow.uscourts.gov  
(816) 512-5674

Subj: **Re:05-6002-01-CR-SJ-GAF USA v. Lisa M.Montgomery**  
Date: 2/14/2005 10:29:39 A.M. Central Standard Time  
From: Anita\_Burns@fd.org  
To: Tracy\_Diefenbach@mow.uscourts.gov, shunt5733@aol.com, matt.whitworth@usdoj.gov

Tracy,  
I would prefer a trial setting in August, 2006 to make sure we have adequate  
time to properly prepare the case for trial.

Thanks,  
Anita

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the use of the addressee(s) named above. If you are not the intended recipient  
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**SUSAN M. HUNT**

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Fax (816) 221-2551

April 26, 2005

Matt Whitworth

Assistant United States Attorney

**Hand Delivered**

400 E. 9<sup>th</sup> Street

Kansas City, Mo. 64106

**Re: United States v. Lisa Montgomery**

Dear Matt:

While reviewing the discovery provided thus far on this case it appears that the FBI has obtained copies of all work records and personnel files of the defendant. Also the documents provided concerning the search of defendant's car indicates that there were two rolls of film shot of the contents of the car and several documents and papers seized, including post it notes, receipts and a purse and wallet.

Pursuant to Rule 16, we would like copies of the following:

1. All work records and personnel files of the defendant;
2. Copies of all documents and papers seized from her car, including post it notes, receipts and copies of any documents and papers from her purse and wallet;
3. Copies of the photographs of the car and the evidence contained therein.

Thank you for your assistance in this matter. If you have any questions please do not hesitate to contact me.

Very truly yours,

Susan M. Hunt

SMH/gh

**SUSAN M. HUNT**

Attorney at Law

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819 Walnut, Suite 413

Kansas City, Missouri 64106-1810

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Fax (816) 221-2551

November 30, 2005

Matt J. Whitworth  
Assistant United States Attorney  
Western District of Missouri  
Charles Evans Whittaker Courthouse  
400 East 9th Street, Fifth Floor  
Kansas City, Missouri 64106

**Re: *United States v. Lisa Montgomery*  
Request for Discovery**

Dear Matt:

We write to verify the discovery received to date, and to request additional items. We are aware that in some instances, we may have received the discovery or item requested below, and seek clarification of that. You have advised that we have received "all discovery" with the exception of one witness interview of a person who did not want his or her identity to be known, and whom the government does not intend to call as a witness.

Essentially, we are in receipt of a number of documents provided as discovery in this case, and bates stamped 1-2268. In addition, you have provided to the Federal Defenders Office nine (9) CDs and 4 color photos. We have had access to review and copy the physical evidence identified as the "1B" items. We have received a two page letter from Michael Jackson regarding a CCA inmate (Laura Angennette Wetzels-Sanders), an individual you have advised the government will not call as a witness. We have also been provided two grand jury transcripts (Liponovich and Espy).

We have received a computer disc containing the ENCASE Report from Lisa Montgomery's Computer. That report references folders containing Rebuilt E-Mail, Rebuilt

Webpages and Documents of Interest. The disc does contain a folder labeled Documents of Interest which contains three documents. We are requesting copies of the Rebuilt E-Mail folder and the Rebuilt Web Page folder. Also, copies of any other Documents of Interest contained in that folder.

In addition to the discovery we have already received, and the above request, we are requesting copies of the following items:

(1) Indexes to 1A's: We request indexes to the 1A's maintained by the FBI and an opportunity to review and copy each of the 1A envelopes and contents. It is our understanding that the 1A envelopes contain 302s, agents notes, and items obtained from witnesses as well as subpoenaed documents.

(2) FBI 1B, 1C, 1D, MIS, OLE, FBL, ABL, CWA, EC, IN, RS, SUS files and Major Case squad leads: We understand that the FBI maintains reports, documents, and other items of potential evidence in these various categories. We request an index of each of these types of FBI files in this case, and access to all such documents or items of evidence. It is our understanding that we have been provided with an index of the 1B's. In addition to these FBI files, we request all copies of all lead cards issued by the Major Case squad.

(3) Although we have been allowed to review and copy some of the 1B evidence maintained by the FBI we are requesting copies of the following 1B evidence that was unavailable for review:

1B(4) pictures from Desiree Boman's cell phone, one of Lisa Montgomery and three of the baby;

1B (11) Fuji film fine pix digital camera with digital images—we request copies of the images;

1B (23) VHS Videotape from RCA Camcorder—we request a copy of the videotape;

1B(38) Disposable camera—we request copies of photos from camera;

1B(18) Memorex CD-R with the writing Lisa Montgomery—this is a recording of one of Lisa Montgomery's phone calls from CCA. We request a copy of the CD-R and a copy of the transcript. We further request copies of all phone calls from

CCA in the government's possession;

1B19(1) Maxell CD-R with the writing Lisa Montgomery "KLNSPOTERRIERS"  
Account from Imagevent. Snapshot of all images at account on December 19,  
2004;

1B19(2) Maxell CD-R with the writing Bobby Stinnett "HAPPYHAVEN"  
Account from Imagevent. Snapshot of all images at account on December 19,  
2004;

1B26 One Floppy disk with the e-mail information concerning Lisa Montgomery;

[Per Agent Lipanovich's request the undersigned has also faxed him a request for the information set forth in (3) above.]

(4) I-Drive Files. We request all "I-drive" computer files of any law enforcement agency maintaining files associated with Lisa Montgomery, or any "special computer space where agents store investigative documents to see whether those materials should be sent to defense lawyers, Congress or special investigative bodies like the Sept. 11 inquiry." See, USA Today, Agents Worry, FBI Failing to Seek Files for Defendants, posted 3/2/2004, 5:41 PM, [http://www.usatoday.com/news/washington/2004-03-02-fbi-documents\\_x.htm](http://www.usatoday.com/news/washington/2004-03-02-fbi-documents_x.htm). The I-drive was created in 1996 and is allegedly used by agents to upload investigative documents like interview reports, investigative inserts and teletypes so their supervisors can approve putting them into the FBI's official case files, which are in paper format.

(5) Government Experts: We request the information required under Rule 16(a)(1)(E) for each expert the government intends to call at trial. We also request the opinion and/or report of any expert who, at the request of the government examined any type of evidence in this case.

(6) Grand Jury Documents: Several grand jury subpoenas were referenced in the testimony of Kurt Lipanovich. They are: (1) subpoena to boardhost.com; (2) subpoena to imageevent.com; (3) subpoena to Qwest Communications; (4) subpoena to Citizen State Bank in Gridley, Kansas; (5) subpoena to Capital One Bank/FSB; (6) subpoena to Discovery Financial Services, Inc.; (7) subpoena to United Kennel Club in Kalamazoo, Michigan; (8) subpoena to Cotton O'Neil Clinic; (9) subpoena to St. Francis Health Center in Topeka, Kansas; (10) subpoena to Coffey County Hospital in Burlington, Kansas; (11) subpoena to Corrections

Corporation of America (CCA) in Leavenworth, Kansas. We request copies of these subpoenas (in addition to any others) as well as the items provided in response.

(7) Other Grand Jury transcripts. We have received copies of the grand jury testimony of Agent Lipanovich and Sheriff Ben Espy. Are these the only witnesses who testified before the grand jury? To the extent that there were additional individuals who testified before the grand jury, we request that testimony. In addition, we request both transcripts and copies of all instructions and/or directions given to the grand jury.

(8) Missing Witness Interview. We request a copy of the witness interview you described in our meeting of November 15, and which is referenced above (paragraph 1). If you feel you are not in a position to disclose that information yet, we request a redacted copy of the interview, with the understanding that an unredacted copy will be provided prior to trial.

(9) 404(b) Evidence. We request notice of all FRE 404(b) evidence the government will seek to introduce at trial.

(10) Rule 12(b)(4)(b). So that we may file appropriate motions to suppress evidence, we request notice under Fed. R. Crim. P. 12(b)(4)(b) of the evidence the government intends to introduce at trial.

(11) Crime Lab Reports. We have received Lab reports numbered 1, 2, and 4, but not number 3. We request production of Lab report 3, and any other laboratory reports regarding potential evidence in this case.

(12) Destruction of Evidence. We note that Crime Lab report 4 indicates that hair root ball evidence was destroyed during testing (*see* bates 2257). Please advise whether any hair evidence remains available for testing, as well as whether any other evidence is now unavailable as a result of government testing procedures.

(13) Witness Credibility. We request that the government provide all evidence and/or information that relates to the credibility of witnesses to be called, including but not limited to any evidence of bias or prejudice against Ms. Montgomery, criminal conduct, pending investigations by federal, state or local authorities for misconduct, evidence of psychiatric or other mental health problems, promises of leniency, reward, sentence reduction, non-prosecution agreements, and civil or domestic consequences.

(14) Brady. We understand that the government is aware of its obligations under Brady v. Maryland, and acknowledge the receipt of one item referred to as Brady material (2/11/05 letter, material relating to Dr. Gill). In the category of Brady, we include a request for any information and/or evidence which is known, or should be known, to investigating authorities that Ms. Montgomery suffered from any impaired capacity (*see* 18 U.S.C. 3592(a)(1)) or any other disturbance (*see* 18 U.S.C. 3592(a)(6)).

(15) Potential Witnesses and Evidence. We include in this category a request for the identity of potential witnesses not interviewed or for whom no 302 or other report was produced, as well as notice of potential physical evidence that was not seized.

(16) Press Releases. We request a copy of the following:

(A). all press releases and/or transcripts of information provided by law enforcement and/or the U.S. Attorneys office regarding this case;

(B) all videos regarding this case posted on the United States Attorney for the Western District of Missouri's website;

(C) a list of all radio or television broadcasts in which a member of the United States Attorney's Office appeared or was interviewed;

(D) a list of all radio or television broadcasts in which a law enforcement officer involved in this case either appeared or was interviewed.

(17) All items not produced. We request that the government provide a listing of all items, reports, documents, indexes, and physical evidence that relate to this case that the government is not providing to the defense.

Please let us know if you have any questions about these requests.

Very truly yours,

Susan M. Hunt  
David L.Owen  
Judy Clarke

**SUSAN M. HUNT**

Attorney at Law

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Kansas City, Missouri 64106-1810

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November 30, 2005

Matt J. Whitworth  
Assistant United States Attorney  
Western District of Missouri  
Charles Evans Whittaker Courthouse  
400 East 9th Street, Fifth Floor  
Kansas City, Missouri 64106

**Re:   *United States v. Lisa Montgomery*  
Request for DNA Related Discovery**

Dear Matt:

We understand that the government has conducted DNA testing of various items in this case (*see e.g., Missouri Police Department Crime Laboratory Report 4, dated 9/13/05, bates 2255-2268*). We request disclosure of scientific materials pertaining to all STR (short tandem repeat) DNA testing performed in this case. This request applies to all STR (short tandem repeat) DNA testing which has been, is currently being, or will be performed in the instant case. We also request disclosure of scientific materials relating to any other method of DNA testing employed in this case. In the event that new materials responsive to this request are produced, discovered, or otherwise come into the possession of the government or its agents, we request that said materials be provided to us without delay. If more than one laboratory handled, or had custody of samples tested in this case, this request should, by the government, be addressed to each such laboratory. We ask that the government also address this request to any laboratory that handled or had custody of samples before or after PCR/STR testing. Relevant laboratories include, but are not limited to, crime labs, commercial DNA testing facilities, and government DNA testing facilities.

### Specific Requests

We request that copies of the following materials be provided to us. We also request that the original materials be made available for inspection in order to compare the copies with the original materials that are in the possession of the prosecution or its agents.<sup>1</sup>

Note: Requests #6 and #7 pertain to computer data files, software programs, and other software-related materials, such as macros, templates, etc. For commercially available software which was used unmodified in this case, a sufficient response is to indicate the name of the software item (program, macro, or other item being claimed as proprietary), the manufacturer and the version used in this case. In the event that any commercial software item was modified in any way in the testing undertaken in this case, please provide either (i) a copy of the modified software item or, (ii) a detailed list of the changes or modifications which were made with regard to the software item as used in this case.

1. Case file: Please provide a legible copy of the complete case file in this case, including all notes of any analyst or peer reviewer, and all records reflecting any DNA, serological, quantitation, and/or statistical testing or analysis in the instant case. For materials that are represented in any format other than black and white paper copies, please provide copies which are equivalent in content and quality (that is, photographic quality copies of photographs and Polaroids, CD-ROM or ZIP disc copies of computerized data).
2. Documents relied upon in performing testing: Please provide legible copies of all documents which were, or are claimed to have been, followed or relied upon in executing, interpreting and/or reporting the DNA tests performed in the instant case, including:
  - (2.1) Standard operating protocols (SOPs) of the DNA testing laboratory.
  - (2.2) Instructions provided by manufacturers of commercial test kits ('package inserts' and 'user's guides').
  - (2.3) Protocols and manuals relating to instruments and/or software.
3. STR database: Please provide copies of the following materials for STR databases which were used or relied upon in performing the statistical test in this case:

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<sup>1</sup>In the event that there is a charge for reproducing any of these materials, please include an itemized list indicating the number of items (for example, number of pages of documents, number of photographs, number of CD-ROMS, etc.), and the cost of copying per item.

- (3.1) Complete database or databases on a computer disc (DOS formatted 3 ½" disc or equivalent) in a format such that the multi-probe genotype is given for each sample tested.
  - (3.2) Copies of all documents related to the source or origin of samples in any such databases, including (i) the method by which samples were collected, (ii) the background and/or characteristics of the individuals who were the source of the samples, (iii) the choice of populations and sub-populations which were sampled, and (iv) the nature of the sampling procedure which was used to collect the samples.
  - (3.3) Laboratory notes and computer data files.
- 4. STR frequency tables: Please provide copies of any STR frequency tables relied upon in performing the statistical test in this case.
- 5. Chain of custody and current disposition of evidence: Please provide copies of all chain of custody documents for each item of evidence subjected to DNA testing starting with the first description or 'log entry' for each item through to the current disposition of that item of evidence. This information should include documentation which indicates where and how the materials were stored (temperature and type of container), the amount of evidence material which was consumed in testing, the amount of material which remains, and where and how the remaining evidence is stored (temperature and type of container).
- 6. Data files: Please provide copies of all data files used and created in the course of performing STR testing and subsequent analysis of STR data in this case. These files should include all data necessary to (i) independently reanalyze the raw data, and (ii) reconstruct the analysis performed in this case. These materials should include, but not be limited to:
  - (6.1) Project files.
  - (6.2) Matrix files, including the data used to compile the matrix files.
  - (6.3) Sample sheet.
  - (6.4) Injection list.
  - (6.5) Firmware memory files (stored in ABI 310 memory backup).
  - (6.6) Additional Genotyper files, including category list, templates, stationery pad documents, and unedited step list.
  - (6.7) Any additional computer files, including data utility program, log file, electrophoresis history.

7. Software and macros: Please provide a list of all commercial software programs used in the DNA testing in this case, including name of software program, manufacturer, and version used in this case. In addition, please identify any commercial macros used to analyze data in this case. In the event that any programs and/or macros written by the testing laboratory were used in the analysis of STR data in this case, please provide copies of these materials.
8. Records of trouble-shooting or problems during testing: Please provide copies of any laboratories records or other materials which document any trouble-shooting, repairs, modifications, or changes which were made to the genetic analyzer instrument used in the instant case. These materials should include:
  - (8.1) Copies of any notes, or records of communications, relating to trouble-shooting which had to be done on the instrument, including calls to technical support lines and visits by field technicians to repair instrument.
  - (8.2) Records of any changes that were made to the instrument in the course of testing samples in this case, including replacement of parts such as a laser or CCD virtual camera.
  - (8.3) Records of all computer resets or reboots which had to be done during the testing in the instant case, including soft reset, cold boot, and/or clear memory reset.
  - (8.4) Records of all incidents in which manual control was used to override genetic analyzer presets.
9. Developmental validation: Please provide copies of any developmental validation studies undertaken by the laboratory which performed the STR DNA testing in this case (pursuant to TWGDAM Guidelines 4.1, 4.2, and 4.4., and DAB Standards 8.1.1 and 8.1.2). These materials should include copies of laboratory notebooks and computer data files.
10. Internal validation: Please provide copies of any internal validation studies undertaken by the laboratory which performed the STR DNA testing in this case (pursuant to TWGDAM Guideline 4.5 and DAB Standard 8.1.3). These materials should include copies of laboratory notebooks and computer data files.

11. Contamination/Error/Unexpected Occurrences or Corrective Action Logs: Please provide copies of all contamination/error/unexpected occurrences or corrective action logs which are be kept pursuant to DAB Standard 14.1 or which are kept for any other reason. These records should include but not be limited to any record of multi-loci matches within any database)
12. Information on the uniqueness of genetic profiles: Please provide copies of the following:
  - (12.1) Records and documentation of any nine (9) locus or more matches between individuals in the convicted offender database whose DNA profiles were typed using either or both Profiler Plus and Cofiler, or Identifiler, which resulted from searches of unknown evidence samples against the convicted offender database;
  - (12.2) Records and documentation of any nine (9) locus or more matches between individuals whose DNA profiles were typed using either or both Profiler Plus and Cofiler, or Identifiler, which resulted from searches of convicted offender samples for quality control/quality assurance or research purposes;
  - (12.3) All records and documents of matches between individuals with nine (9) or more loci that were determined to be different individuals, regardless of their source including reports from local and county crime labs, or any other laboratory or facility besides the CODIS lab. No identifying information need be provided;
  - (12.4) All records and documents of matches made between evidence and a convicted offender profile, where, after investigation, Cal-DOJ or a local or county lab or police or sheriff's department determined that it was impossible or unlikely for the convicted offender to be the perpetrator of the crime which resulted in the databank hit; and
  - (12.5) All standard operating procedures, policy manuals and quality control/quality assurance manuals for convicted offender database sampling, including but not limited to the reporting of multiple hits to one profile and documentation of multiple hits to one profile; or
  - (12.6) In the alternative, please provide a copy of all convicted offender samples, absent identifying information in a searchable format. This database should be provided as an electronic file consisting of the complete genetic profiles

(multilocus genotypes) of every individual in the convicted offender database. Explanatory material such as the order of loci on the file and the characters used for missing data should also be indicated.

13. Proficiency tests: Please provide copies of all STR proficiency tests which have been undertaken by any analyst and/or peer reviewer who performed the STR testing or review in this case. These materials should include for each proficiency test (i) the complete proficiency test case file, (ii) computer data files, (iii) evaluations and/or reports by the testing agency, and (iv) records maintained pursuant to TWGDAM Guideline 9.3 and DAB Standard 13.1.1.
14. Accreditation: Please provide copies of all licenses or other certificates of accreditation held by the DNA testing laboratory.
15. Audits: Please provide copies of any internal or external audits conducted for purposes of acquiring or maintaining accreditation or any other purpose.
16. Laboratory personnel: Please provide a current resumé and job description for each person involved in conducting or reviewing the DNA testing performed in this case, as well as any *Brady* material relevant to impeaching the credibility of such person or of the laboratory in which such person works, including, but not limited to, any internal or external documentation relating to investigations by the Inspector General.

Please let us know if you have any questions regarding these requests.

Very truly yours,

Susan M. Hunt  
David L. Owen  
Judy Clarke

SMH/gh